IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

WEDNESDAY, THE 19TH SEPTEMBER 2007 / 28TH BHADRA 1929

MFA.No. 867 of 2001()

OPMV.392/1997 of MOTOR ACCIDENT CLAIMS TRIBUNAL, TRIVANDRUM
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APPELLANT/APPLICANT:

SIVAPRASAD, S/O.GANGADHARAN PILLAI,
AGED 55 YEARS, RESIDING AT T.C.21/278,
PADMALAYAM JUDGE ROAD, KARAMANA P.O.,
THIRUVANANTHAPURAM.

BY ADV. SRI.J.S.AJITHKUMAR

RESPONDENTS/RESPONDENTS:
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1. JOHNSLY MOSES, S/O. GODWIN, ROOFEN ELLAM,
23/1A, ASARIPALLAM ROAD, NAGARCOIL,
KANYAKUMARI DISTRICT, TAMILNADU.

2. RAMACHANDRAN, S/O.VEERABABU PILLAI,
THIRUNAYANAN KURICHI, PILLAYAR COIL,
HOUSE NO.51-B KALKULAM DESOM,
KANYAKUMARI DISTRICT, TAMIL NADU.

3. NATIONAL INSURANCE COMPANY LTD.,
BRANCH OFFICE NORTH STSREET,S NAGAR COIL,
KANYAKUMARI DISTRICT, TAMIL NADU.

4. SAJAN, S/O.ABDUL AZEEZ, S.A. MANZIL,
CHEMBAKA MANGALAM KORANI P.O.,
THIRUVANANTHAPURAM.

5. JAYAN, S/O.SOMAN, KAVUVILA VEEDU,
PILL A VEETUMURI, VEYILOOR VILLAGE,
CHEMBAKAMANGALAM, KORANI P.O.,
THIRUVANANTHAPURAM.

6. TH E ORIENTAL INSURANCE COMPANY LIMITED,
BRANCH OFFICE ST.MARY VILLA, MEDICAL COLLEGE P.O;.,
ULLOOR, THIRVANANTHAPURAM.

R3 BY ADV. SRI.LAL GEORGE
R6 BY ADV. SRI.A.R.GEORGE

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 19/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B. KOSHY & K. HEMA, JJ.

M.F.A.No.867 of OF 2001

Dated this the 19th day of September, 2007.

JUDGMENT

Koshy, J:

Appellant-claimant suffered serious injuries in a motor accident. The Tribunal found that the accident occurred due the negligence of the driver of the vehicle insured by the 3rd respondent. Even though Rs.2,00,000/- was claimed as compensation, total compensation including medical reimbursement granted was only Rs.1,10,000/- and only quantum of compensation is disputed in this appeal. As regards the injuries are concerned, due to the accident his patella was fractured and it was removed. Ext.A7 is the reference O.P. Card and Ext.A8 is the disability certificate. The disability certificate shows that there is 15% disability. The disability certificate reads as follows:

> "Certified that Sri.Sivaprasad aged 39 years, Syamalayam, Kudavoor P.O Thonnackal admitted to this hospital on 27.8.1996 after a road traffic accident in which he sustained the following injures:
>
> 1. Comminuted fracture patella left.
> 2. Multiple abrasions on left upper limb
> 3. Lacerated wound of scalp
>
> He was treated as inpatient as per IP No.825391. Treated by total patellectomy done under spinal

anaesthesia and quadriceps repair done and limb was immobilised in plaster of paris leg cylinder. Postoperative period was uneventful and treated with appropriate antibiotics, analgesics and anti inflammatory drugs, would healed and sutures removed on 3.9.96 and discharged on 4.9.6 with advice to review to Ortho II OP after four weeks. Plaster of paris removed on 4.10.96 and advised elastocrepe bandage and static quadriceps exercises. Since he developed gross stiffness of the knee joint he was referred to Department of Physical Medicine and rehabilitation for a course of physiotherapy.

I, Dr.V.Sreekumaran Nair, after careful personal examination of the patient both clinically and radiologically on 29.4.97 assessed the following disabilities:

1. Physical and mental strain.

2. Temporary disability is 100% for a period of six weeks from the date of accident.

3. Temporary disability is 50% for a further period of four weeks.

4. Temporary disability is 25% again for a period of four weeks.

5. Permanent partial disability is assessed as 15% (fifteen) due to (A) post traumatic partial ankylosis of left keen joint as consequence of excision of patella in toto and resulting fibrosis of the left knee joint, motion limited to an arc from 180-80 flexion (Ref page 73 table 14 of Mc Bride's scale).

B. Limitation of flexion is restricted due shortening in effective length of the quadriceps Mechanism and it in turn auguments the limitation of flexion.

C. The available range of movements is painful due to post traumatic secondary osteoarthritis of the Tibio femoral joint.

D. Wasting of the left thigh muscles due to inadequate functioning of the quadriceps mechanism.

E. Normal gait is not possible in the absence of normal quadriceps mechanism.

F. The protective barrier of lefet knee joint in front is lost by the absence of patella and so the knee joint is easily susceptible to injury from the exterior.

G. Balanced weight bearing is impossible die to the absence of normal quadriceps mechanism which is very essential for the dynamic and static function of the lower limb.

H. Squating is impossible and so the patient has to depend on European closet. Since he patient can not flex the limb beyond 80 at knee joint affected.

I. Prolonged standing is impossible due to impaired static mechanism of left quadriceps and will result in fatigue of muscles and forced to take rest before resuming to utilise the limb.

He is an Advocate by profession."

2. The Tribunal accepted the above certificate. Since he was aged 40 years, 15 was taken as the multiplier. The claimant was an advocate by profession having more than 15 years practice. Apart from the court practice, he was a Part-Time Lecturer in a parallel college. According to claimant, he was getting Rs.7000/- per month. The Tribunal has taken Rs.5,000/- as the monthly income and calculated compensation for 15% disability as follows:

"5,000 x 12 x 15 x 15% =1,35,000/-".

3. Even though Rs.1,35,000/- was calculated, since the claimant

claimed only Rs.68,000/- for permanent disability, the Tribunal granted only Rs.68,000/-.

4. The Apex Court in Nagappa v. Guru Dayal Singh (AIR 2003 SC 674) held that it is the duty of the Tribunal to grant just and reasonable compensation and the amount need not be restricted to the claim. Even otherwise, total amount of compensation claimed was Rs.2,00,000/- and what was awarded by the Tribunal was Rs.1,10,000/-. If that be so, on the basis of the calculation made by the Tribunal the claimant is entitled to another Rs,67,000/- more on that count. It is submitted that even though Rs.42,000/- was claimed for pain and suffering, only Rs.15,000/- was granted under other head. Considering the total compensation awarded, we are of the opinion that no enhancement of compensation is required. The total compensation payable will be Rs.1,77,000/-. Award is modified accordingly. The additional compensation of Rs.67,000/- now awarded shall be deposited by the 3rd respondent Insurance Company with 7.5% interest from the date of application till it's deposit. Since the accident occurred more than a decade ago and the claimant is an Advocate, who is able to manage his affairs, he is allowed to withdraw the amount on deposit of the compensation.

SD/-

J.B.KOSHY, JUDGE.

SD/-

Krs. **K. HEMA, JUDGE.**

J.B. KOSHY & K. HEMA, JJ.

M.F.A.No.867 of OF 2001

Dated this the 19th day of September, 2007.

JUDGMENT